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No. 92-46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

VIRGINIA SMITH (WIDOW OF LINDEL SMITH) (DECEASED), JERRY LYNN SMITH, LARRY WAYNE SMITH, TINA MARIE SMITH, JIMMIE DARRELL SMITH, AND BELINDA JOY MATEJA,

Petitioners,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICUS CURIAE THE CHICAGO BLACK LUNG ASSOCIATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED FOR REVIEW

Whether the Sixth Circuit erred in strictly construing Federal Rule of Appellate Procedure 3(c)'s notice requirements to prevent a Black Lung claimant's statutory successors from appealing in light of the Black Lung Act's presumption of a continuation of the claim upon death of a party and the fact that the adverse party acknowledged that the timely-filed Notice of Appeal provided sufficient notice of the nature of the claim being appealed and the identity of the appellants?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. The Sixth Circuit's Strict Construction of the Notice of Appeal Conflicts with the Presumption that a Black Lung Claim Continues Upon Death of a Party Absent an Affirmative Showing That Successors in Interest Do Not Wish to Continue the Claim	5
II. The Black Lung Benefits Act is to be Liberally Construed	9
III. The Decision of the Sixth Circuit Also Conflicts with the Drafters' Intent that the Notice Requirements of Federal Rules of Appellate Procedure 3 and 15 be Liberally Construed	10
CONCLUSION	13

TABLE OF AUTHORITIES

CASES	PAGE
Albedyll v. Wisconsin Porcelain Co., 947 F.2d 246 (7th Cir. 1991)	13
Echo v. Director, Office of Workers' Comp. Programs, 744 F.2d 327 (3rd Cir. 1984)	9
Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227 (1962)	13
In Re Grand Jury Proceedings, 875 F.2d 927 (1st Cir. 1989)	12
Kowalchick v. Director, Office of Workers' Comp. Programs, 893 F.2d 615 (3rd Cir. 1990)	7
Minority Employees v. Tennessee Dept. of Employment Sec., 901 F.2d 1327 (6th Cir. en banc), *cert. denied*, 111 S. Ct. 210 (1990)	11
Morris v. Mathews, 557 F.2d 563 (6th Cir. 1977)	6, 10
Mullins v. Director, Office of Workers' Comp. Programs, 484 U.S. 135, 108 S. Ct. 427 (1987)	5
Orange v. Island Creek Coal Co., 786 F.2d 724 (6th Cir. 1986)	10
Pittston Coal Group v. Sebben, 488 U.S. 105, 109 S. Ct. 414 (1988)	5
Virginia Primm (Widow of Alexander Primm, Deceased) v. Director, Office of Workers' Comp. Programs, 15 B.L. Rptr. 3-8 (ALJ Jan. 28, 1991)	8
Clyde Rudd (Deceased) and Betty Rudd (Deceased Widow) v. Sewell Coal Co., 15 B.L. Rptr. 3-14 (ALJ Jan. 28, 1991)	8

Smith v. Barry, ____ U.S. ____, 112 S. Ct. 678 (1992) 12

Southard v. Director, Office of Workers' Comp. Programs, 732 F.2d 66 (6th Cir. 1984) 10

Sulyma v. Director, Office of Workers' Comp. Programs, 827 F.2d 922 (3rd Cir. 1987) 7

Torres v. Oakland Scavenger Co., 482 U.S. 312, 108 S. Ct. 2405 (1988) 12

Underhill v. Peabody Coal Co., 687 F.2d 217 (7th Cir. 1982) 9

Wiley v. Consolidation Coal Co., 892 F.2d 498 (6th Cir. 1989) 6

STATUTES, REGULATIONS AND RULES

30 U.S.C. § 801-945 (1982) 5

30 U.S.C. § 901 *et seq.* 1, 3, 5, 6

30 U.S.C. § 932(a) (1982) 6

33 U.S.C. § 921(b) (1982) 7

33 U.S.C. § 921(c) (1982) 7, 8

20 C.F.R. § 410.402 (1980) 8

20 C.F.R. § 410.456(a) (1980) 8

20 C.F.R. § 410.482 (1980) 8

20 C.F.R. §§ 725.303-725.305 (1988) 6

20 C.F.R. § 725.410 (1988) 6

20 C.F.R. § 725.417 (1988) 6

20 C.F.R. § 725.419, § 725.421 (1988) 6

20 C.F.R. § 725.545(c) (1980) 8

20 C.F.R. § 802.402 (1988) 7

Fed. R. App. P. 3 (1988) 4, 11

Fed. R. App. P. 15 (1988) 4, 11

Notes of Advisory Committee on Appellate Rules, Fed. R. Civ. P. 3(c) 11

OTHER

Falk, COUNSELING THE MINER SUFFERING FROM RESPIRATORY DISEASE, 83 W. VA. L. REV. 833 (1981) 5

Michaels, THE CONSTITUTIONAL CONUNDRUM OF BLACK LUNG APPEALS: TWO PROPOSED SOLUTIONS, 23 U. MICH. J.L. REF. 27 (1989) ... 6, 11-12

Ramsey and Habermann, THE FEDERAL BLACK LUNG PROGRAM, THE VIEW FROM THE TOP, 87 W. VA. L. REV. 575 (1985) 6

Stephans, THE SECOND DECADE OF FEDERAL BLACK LUNG BENEFITS—THE SIXTH CIRCUIT TIGHTENS THE REINS, 82 DET. C.L. REV. 813 (1982) 12

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INTEREST OF AMICUS CURIAE

The Chicago Area Black Lung Association ("CABLA") is a not-for-profit organization comprised of hundreds of disabled miners, widows, and survivors. Founded in 1976, CABLA exists to assist black lung victims and their families in connection with their claims for benefits under the Black Lung Benefits Act, 30 U.S.C. § 901 *et. seq.*

CABLA assists former coal miners and their families in the potentially lengthy and confusing process of obtaining benefits. Through CABLA, over 400 disabled miners and widows have received benefits, some of whom waited over fifteen years to receive compensation. Presently, CABLA is helping to coordinate the efforts of over 200 coal miners and their families in their claims for Black Lung Benefits in courts and administrative agencies throughout the country.

CABLA is interested in this case because the rule of law established by the Sixth Circuit contravenes the presumptions established in the regulatory scheme as well as the sufficiency of notice of appeal standards issued by this Court, other appellate courts, and the Sixth Circuit itself. Since many of the claims that have been processed with CABLA's help involve coal miners who were employed within the Sixth Judicial Circuit, the ruling in this case will have a significant direct impact on numerous claims filed through CABLA. If other circuits follow the Sixth Circuit lead, the impact will be much more far reaching, as the regulations establishing the continuity of claims upon the death of the claimant will be effectively eliminated.

Obtaining benefits is a lengthy and cumbersome process for disabled coal miners. First, a claim is made to the Department of Labor. If that claim is denied, it can be reviewed by the Deputy Commissioner, Department of Labor. If that denial is affirmed, a claimant may seek an evidentiary hearing before an Administrative Law Judge ("ALJ"). If the ALJ also denies the claim, the claimant may seek review by the Benefits Review Board ("BRB"). If the BRB affirms the ALJ's denial, the claimant may appeal to the Circuit Court of Appeals in the Circuit where the coal miner was employed. This process takes

years. Through all administrative stages, the claim is governed by the regulations promulgated under the statutory authority of the Black Lung Benefits Act (30 U.S.C. §§ 901-945) as codified at various Sections of 20 C.F.R.

The regulatory scheme contains a presumption that upon the death of the named claimant, the claim will continue to be pursued by the successors to the claim. Since pneumoconiosis is a progressively degenerative disease without a cure, it is not at all uncommon for the miner that initially brings a claim for black lung benefits to die during the pendency of the proceedings.

The rule adopted in this case effectively precludes judicial review of agency denials when the initial claimant dies while the claim is pending with the agency. Judicial review will be denied because the regulations governing the agency proceedings specifically require the continuation of the claim after the claimant's death without formal substitution. Thus, unless an unnecessary substitution is effected during the agency proceedings, an appeal from an agency decision will always be brought in the name of the deceased claimant, with substitution to occur in the appellate court after jurisdiction is vested by a timely-filed notice of appeal. However, the Sixth Circuit's decision precludes this process. Because of the frequency with which claimants predecease the final resolution of their claims, the Sixth Circuit's ruling on this issue has a tremendous impact on hundreds of claims currently mired in the agency proceedings.

Absent reversal, this situation is bound to be repeated. Consequently, there is a strong public interest, which the amicus advances in this brief, in declaring that Rule 3(c) allows a statutory successor to be substituted after a timely-filed notice of appeal in the name of the original claimant.

SUMMARY OF THE ARGUMENT

Pneumoconiosis is a devastating, progressively degenerative disease which has afflicted over a million coal miners throughout the nation. Miners afflicted with pneumoconiosis begin having difficulties breathing, shortness of breath, and coughs. Because the disease is progressively degenerative, afflicted miners eventually become disabled and die. The disease is irreversible, and there is no cure.

To compensate the disabled miners, Congress enacted the Black Lung Benefits Act. In recognition of the fact that many claimants die during the pendency of their claim, the regulations presume continuation of the claim upon death of a party absent an affirmative showing to the contrary. 20 C.F.R. 802.402. By dismissing the appeal in the instant litigation because the claimant's statutory successors were not formally substituted, the Sixth Circuit's decision conflicts with this presumption.

Both the Black Lung Act and Federal Rule of Appellate Procedure 3(c)[1] were intended to be liberally construed. Nevertheless, the Sixth Circuit strictly construed the notice requirements of Rule 3(c) in direct conflict with the drafters' intent, decisions of this Court, and its own precedent. The many diverging appellate court decisions addressing Rule 3(c)'s requirements evidence conflicting understandings of this Court's decision in *Torres v. Oakland Scavenger Co.*. The Chicago Area Black Lung Association urges this Court to exercise its discretion and review this case to reconcile the conflict between the

[1] Although Rule 15 governs appeals from administrative agencies, citations are to Rule 3(c), governing appeals from district courts, because the language of the two rules is nearly identical and most cases discussing the issue refer to Rule 3(c).

regulation's presumption of continuation of claims without formal substitution and the Sixth Circuit's ruling that mandates formal substitution during the agency proceedings. The resolution of this question is vitally important to the families of the many miners who are likely to die before their claims are finally resolved.

ARGUMENT

I. The Sixth Circuit's Strict Construction of the Notice of Appeal Conflicts with the Presumption that a Black Lung Claim Continues Upon Death of a Party Absent an Affirmative Showing That Successors in Interest Do Not Wish to Continue The Claim.

As this Court has recognized, black lung disease (pneumoconiosis) is a devastating ailment. It afflicts "hundreds of thousands of coal miners who have spent their entire working lives inhaling coal dust." *Pittston Coal Group v. Sebben*, 488 U.S. 105, 109 S. Ct. 414, 425 (1988) (Stevens, J., dissenting). The coal dust causes the lining of the lungs to harden which slowly disables the victim. In addition, the disease leads to a host of other ailments such as asthma, emphysema, and cancer. Due to the debilitating nature of the disease, black lung victims and their families suffer terribly. *See*, Falk, COUNSELING THE MINER SUFFERING FROM RESPIRATORY DISEASE, 83 W. VA. L. REV. 833 (1981); *see also Mullins v. Director, Office of Workers' Comp. Programs*, 484 U.S. 135, 138, 108 S. Ct. 427, 429 (1987).

Prompted by the severity of pneumoconiosis, Congress enacted four statutes aimed at protecting and compensating this nation's coal miners.[2] The purpose of these stat-

[2] *See* Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, 83 Stat. 742, 30 U.S.C. §§ 801-945; Black Lung Benefits

(Footnote continued on following page)

utes is to ensure the safety of mine workers and to provide benefits to afflicted miners and their dependents to correct "the inadequacy of compensation to miners totally disabled by coal workers' pneumoconiosis". *Morris v. Mathews*, 557 F.2d 563, 567 (6th Cir. 1977); *see also Wiley v. Consolidation Coal Co.*, 892 F.2d 498, 503 (6th Cir. 1989). ("[The Black Lung Benefits Act] was enacted in order to facilitate and liberalize the flow of compensation to miners who acquire pneumoconiosis as a result of working in the coal mines.").

The flow of compensation to miners, however, has been slowed to a trickle by the bureaucratic process. The mire of bureaucracy facing the black lung litigant has been well-documented.[3] The regulations require the claimant to file a claim with the Social Security Administration or the Department of Labor. 20 C.F.R. §§ 725.303—725.305 (1988). The claim is then forwarded to the Office of Worker's Compensation Programs ("OWCP"). 20 C.F.R. § 725.410 (1988). If the OWCP denies the claim, the claimant can request review by the Deputy Commissioner. 20 C.F.R. § 725.417 (1988). If denied by the Deputy Commissioner, the claim can be appealed to an Administrative Law Judge ("ALJ") for an evidentiary hearing. 20 C.F.R. §§ 725.419, 725.421 (1988). Either party can then appeal

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[2] *continued*

Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95, 30 U.S.C. §§ 901-945; Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, 97 Stat. 1643, 30 U.S.C. §§ 901-945; Longshoreman's & Harbor Worker's Compensation Act, 33 U.S.C. § 901 (1982) (incorporated into Black Lung Statutes by 30 U.S.C. § 932(a) (1982)).

[3] *See* Ramsey and Habermann, THE FEDERAL BLACK LUNG PROGRAM, THE VIEW FROM THE TOP, 87 W. VA. L. REV. 575 (1985); Michaels, THE CONSTITUTIONAL CONUNDRUM OF BLACK LUNG APPEALS: TWO PROPOSED SOLUTIONS, 23 U. MICH. J.L. REF. 27, 31 (1989).

the ALJ's decision to the Benefits Review Board ("BRB"). 33 U.S.C. § 921(b) (1982). The BRB's decision can be appealed to the Circuit Court for any of the states in which the coal miner was employed. 33 U.S.C. § 921(c) (1982). Thus a claimant faces five levels of administrative review before his or her claim reaches the judiciary.

Each step in the process can take years, making a claim for benefits an extraordinarily lengthy process. *See e.g. Kowalchick v. Director, Office of Workers' Comp. Programs*, 893 F.2d 615 (3rd Cir. 1990) (claim filed 17 years before the court determined the miner was entitled to benefits); *Sulyma v. Director, Office of Workers' Comp. Programs*, 827 F.2d 922 (3rd Cir. 1987) (court remanded case to award benefits and not for a determination of facts because of length of time claimant had sought benefits). In light of the degenerative nature of this disease, it is not at all uncommon for the original claimant to die during the claim process and for the claim to be pursued by his or her successors, as provided for in the regulations. The Sixth Circuit's opinion in this case stops the appeal process before it reaches the judiciary because the successors cannot file an appeal in their own name (because they are not the parties below), cannot be substituted until a notice of appeal vests the circuit court with jurisdiction, and the court has rejected a timely filed notice of appeal filed in the name of the deceased claimant.

In recognition of the likelihood that many miners do not survive to see their claims fully adjudicated, the regulations provide that claims will continue upon the death of a party absent an affirmative showing that there is "no person who wishes to continue the action and whose rights may be prejudiced by dismissal." 20 C.F.R. § 802.402 (1988). Further, the regulations delineate several presump-

tions specifically designed to aid survivors in establishing their right to benefits.[4]

Indeed, in many cases where the claimant has died, the agency proceedings have continued, as designed, without formal substitution. *See e.g., Clyde Rudd (Deceased) and Betty Rudd (Deceased Widow) v. Sewell Coal Co.*, 15 B.L. Rptr. 3-14 (ALJ Jan. 28, 1991) (ALJ heard and decided merits of appeal despite uncertainty as to identity of successors in interest who were entitled to benefits and fact that caption of case included only deceased claimants); *Virginia Primm (Widow of Alexander Primm, Deceased) v. Director, Office of Workers' Comp. Programs*, 15 B.L. Rptr. 3-8 (ALJ Jan. 28, 1991) (despite the caption of the case, Virginia Primm had passed away and the ALJ noted in a footnote that the claim was being pursued by the daughter of the claimants.)

The rationale behind this policy is clear: it would be unconscionable and inconsistent with the purposes of the Black Lung Benefits Act to deny a claim for disability benefits solely because the claimant died. In essence, it would reward the inefficiencies in the Department of Labor's cumbersome and time-consuming claims litigation process by providing immunity from valid claims if only they can be strung out long enough for the miner to die. This logically necessary but wholly perverse result could not have been the intent of the Sixth Circuit in reaching

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[4] *See* 20 C.F.R. § 410.482 (1980); 30 U.S.C. § 921(c)(2) (1970) (presumption that miner's death was due to pneumoconiosis); 20 C.F.R. § 410.456(a) (1980) (presumption of total disability); 20 C.F.R. § 725.545(c) (1980) (delineating line of succession if claimant dies); 20 C.F.R. § 410.402 (1980) (presumption of death from pneumoconiosis if miner worked for 10 years and died from respiratory disease).

a conclusion that fully extirpates the regulation's presumption of continuity. Nevertheless, the Sixth Circuit's *sua sponte* dismissal of the appeal directly conflicts with the sound, statutory presumption that the claim continues, in a case in which both parties agree that the claim was properly before the Court and that error occurred at the administrative level. *See* Petitioners' Petition for Writ of Certiorari at 6 (S. Ct. No. 92-46).

The far-reaching impact of the Sixth Circuit's erroneous ruling cannot be minimized. The successors of hundreds of other claimants who will die from pneumoconiosis and its related conditions while their claims are pending with the Department of Labor will not have a judicial forum if their claims are denied by the Benefits Review Board.

II. The Black Lung Benefits Act is to be Liberally Construed.

Congress has amended the Black Lung Act on several occasions to ensure the liberal award of benefits to qualified miners and their dependents and to rectify what it perceived was a practice of undue strictness in the award of benefits. *See Underhill v. Peabody Coal Co.*, 687 F.2d 217, 219-220 (7th Cir. 1982) (1977 Black Lung Reform Act was to "expand the coverage contemplated by the original act and to liberalize claim awards"); *Echo v. Director, Office of Workers' Comp. Programs*, 744 F.2d 327, 329-330 (3rd Cir. 1984) (1972 amendments were enacted because "Congress was displeased with the Secretary's stringent application of the legislation.") By strictly construing the notice requirements, the Sixth Circuit's decision is at odds with Congressional intent.

The Black Lung Regulations, promulgated pursuant to the Act, were designed so that claims for benefits would

continue upon the death of a party without substitution. "Courts are obligated to follow this Act so as to give realistic and not niggardly effect to the stated congressional purpose." *Morris v. Mathews*, 557 F.2d 563, 570 (6th Cir. 1977). Courts have acknowledged that the "Act is remedial and should be liberally construed so that all doubts are resolved in favor of the disabled miner." *See Orange v. Island Creek Coal Co.*, 786 F.2d 724, 727 (6th Cir. 1986) (citation omitted). By holding that the statutory successors must be formally substituted, the Sixth Circuit has ignored its own precedent. In so doing, it has precluded the very large class of successors of claimants who die while their claim is pending with the Department of Labor from receiving their benefits.

The Sixth Circuit's decision also contravenes the policy it set forth in *Southard v. Director, Office of Workers' Comp. Programs*, 732 F.2d 66 (6th Cir. 1984). In *Southard*, the court stated that the Black Lung Act "must be liberally construed to include the largest number of miners as benefit recipients." *Id.* at 71 (citations omitted). In contrast, in the present case, the Sixth Circuit's rigid formalism denies many claimants the opportunity to seek their benefits. Thus, the Sixth Circuit's holding requires reversal because it disregards the mandate that the Act be liberally construed and it unduly hinders the flow of compensation to entitled claimants in conflict with congressional and administrative agency objectives.

III. The Decision of the Sixth Circuit Also Conflicts with the Drafters' Intent that the Notice Requirements of Federal Rules of Appellate Procedure 3 and 15 be Liberally Construed.

Not only is the decision in this case contrary to the spirit and letter of the Black Lung regulations, but it also

violates the sufficiency of notice standard stated by the Drafters of the Rule, this Court, and the majority of courts who have addressed the issue, including the Sixth Circuit itself.

Federal Rule of Appellate Procedure 3(c) states that "[t]he notice of appeal shall specify the party or parties taking the appeal". Fed. R. App. P. 3(c) (1989). Because Virginia Smith died before her appeal and her survivors were not formally substituted at the administrative level, the Sixth Circuit denied the appeal for lack of jurisdiction. However, the Drafters of Rules 3(c) and 15 intended that they be interpreted liberally, especially when a strict construction of their requirements would lead to a harsh result.

> Because of the fact that the timely filing of the notice of appeal has been characterized as jurisdictional (citation omitted), it is important that the right to appeal not be lost by mistakes of mere form. . . . In a number of decided cases it has been held that so long as the function of notice is met by the filing of a paper indicating an intention to appeal, the substance of the rule has been complied with.

Notes of Advisory Committee on Appellate Rules, Fed. R. App. P. 3 (1989). The appellee has conceded that the notice of appeal in the present litigation sufficiently placed him on notice. Nevertheless, the court felt bound by *Minority Employees v. Tennessee Dept. of Employment Sec.*, 901 F.2d 1327 (6th Cir. en banc), *cert. denied*, 111 S. Ct. 210 (1990), to construe strictly the notice requirements. For the reasons set forth in Petitioner's Petition for Writ of Certiorari, CABLA agrees that it was a reversible error to dismiss the instant appeal.[5]

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[5] The Sixth Circuit has gained some notoriety for dismissing Black Lung claims for procedural technicalities. *See*, Michaels,

(Footnote continued on following page)

A proper application of the sufficiency of notice standards to similar facts is found *In re Grand Jury Proceedings*, 875 F.2d 927 (1st Cir. 1989). In this case, an Assistant United States Attorney appealed from a conviction for contempt of court. The Notice of Appeal named the "United States of America" as appellant. The court held that the United States of America did not have standing. Nevertheless, the court retained jurisdiction. Citing *Torres*, the First Circuit held that the Notice of Appeal sufficiently notified the Court and the other party that the attorney intended to appeal:

> This is not a multi-party case where the notice of appeal fails to make clear which party or parties intend to appeal, thereby providing notice so vague as to deprive the court of jurisdiction over the unnamed parties' appeals. *Cf. Torres*, 108 S.Ct. at 2409. The problem with [the attorney's] notice of appeal is an 'informality of form or title' which should not lead to dismissal. *See* Fed. R. App. P. 3(c).

Id. at 931.

Rule 3(c) must be construed liberally. *See Smith v. Barry*, ____ U.S. ____, 112 S. Ct. 678, 681 (1992) ("Courts will liberally construe the requirements of Rule 3.") "[M]ere technicalities should not stand in the way of consideration of a case on its merits." *Torres* 108 S. Ct. at 316.

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[5] *continued*

THE CONSTITUTIONAL CONUNDRUM OF BLACK LUNG APPEALS: TWO PROPOSED SOLUTIONS, 23 U. MICH. J.L. REF. 27, 27 (1989) ("An alarming injustice of the American legal system is the way in which courts dismiss many pneumoconiosis (black lung) appeals because the petitioner fails to conform with procedural guidelines. Nowhere is this problem more acute than in the United States Court of Appeals for the Sixth Circuit."); *see also* Stephans, THE SECOND DECADE OF FEDERAL BLACK LUNG BENEFITS—THE SIXTH CIRCUIT TIGHTENS THE REINS, 82 DET. C.L. REV. 813 (1982).

"The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Albedyll v. Wisconsin Porcelain Co.*, 947 F.2d 246, 254 (7th Cir. 1991) (citing *Foman v. Davis*, 371 U.S. 178, 181-182, 83 S. Ct. 227, 229-230 (1962)). The Sixth Circuit erred when it refused to construe the Notice of Appeal in this fashion. The weight of authority rejects the Sixth Circuit reasoning; but to the extent conflicting authority exists, this case presents an opportunity for the Court to exercise its authority to resolve a conflict among the Courts of Appeal on an important issue of law that if left uncorrected will affect hundreds of black lung claimants.

CONCLUSION

The amicus respectfully requests that this Court grant the petition for writ of certiorari and reverse the decision of the Sixth Circuit. By doing so, the Court would correct an alarming injustice, prevent further injustices, and at the same time clarify an important issue of law.

Respectfully submitted,

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